



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-979]

#### **Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People's Republic of China: Notice of Court Decision Not in Harmony with the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On December 8, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *SolarWorld Americas, Inc., et al. v. United States*, Consol. Court No. 16-00134, sustaining the Department of Commerce (Commerce)'s fourth remand results pertaining to the administrative review of the antidumping duty (AD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China) covering the period December 1, 2013, through November 30, 2014. Commerce is notifying the public that the CIT's final judgment is not in harmony with the final results of the 2013-2014 AD administrative review of the solar cells from China and that Commerce is amending those final results with respect to the dumping margin assigned to the following companies: (1) the collapsed entity comprising Changzhou Trina Solar Energy Co., Ltd.; Trina Solar (Changzhou) Science and Technology Co., Ltd.; Yancheng Trina Solar Energy Technology Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; and Hubei Trina Solar Energy Co., Ltd. (collectively, Trina); (2) Canadian Solar International Limited; (3) Canadian Solar Manufacturing (Changshu) Inc.; (4) Canadian Solar Manufacturing (Luoyang) Inc.; (5) BYD (Shangluo) Industrial Co., Ltd.; and (6) Shanghai BYD Co., Ltd.

**DATES:** Applicable December 18, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2769.

**SUPPLEMENTARY INFORMATION:**

Background

On June 20, 2016, Commerce published the final results of the 2013-2014 AD administrative review of solar cells from China. In the *Final Results*, Commerce selected Thailand as the primary surrogate country and relied on Thai import data to value nitrogen that was used in manufacturing solar cells.<sup>1</sup>

Respondents, Trina, Canadian Solar Inc. et al., BYD (Shangluo) Industrial Co., Ltd., Shanghai BYD Co., Ltd., and Yingli,<sup>2</sup> and domestic interested party, SolarWorld Americas, Inc. (SolarWorld), challenged Commerce's *Final Results* (CIT case numbers 16-00132, 16-00134, and 16-00135). The CIT consolidated case numbers 16-00132, 16-00134, and 16-00135 into case number 16-00134 in October 2016. On October 18, 2017, the CIT sustained Commerce's *Final Results* with respect to: (1) the surrogates that it selected to value aluminum frames, semi-finished polysilicon ingots and blocks, solar backsheets, nitrogen, and financial ratios; and (2) its application of adverse facts available with respect to unreported factors of production. However, the CIT remanded the *Final Results* to Commerce to reconsider, or further explain: (1) the surrogates that it selected to value tempered glass and scrapped solar cells and modules; and (2)

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<sup>1</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 81 FR 39905 (June 20, 2016) (*Final Results*), and accompanying Issues and Decision Memorandum at Comment 21.

<sup>2</sup> We used "Yingli" to refer to the following companies that we treated as a single entity: Yingli Energy (China) Company Limited; Baoding Tianwei Yingli New Energy Resources Co., Ltd.; Tianjin Yingli New Energy Resources Co., Ltd.; Hengshui Yingli New Energy Resources Co., Ltd.; Lixian Yingli New Energy Resources Co., Ltd.; Baoding Jiasheng Photovoltaic Technology Co., Ltd.; Beijing Tianneng Yingli New Energy Resources Co., Ltd.; Hainan Yingli New Energy Resources Co., Ltd.; and Shenzhen Yingli New Energy Resources Co., Ltd.

its decision to include import values with zero import quantities in its surrogate value calculations.<sup>3</sup>

In its first remand redetermination, issued in January 2018, Commerce further explained its surrogate value selections for tempered glass and scrapped solar cells and modules and explained why it was appropriate to include import values with zero import quantities in its surrogate value calculations.<sup>4</sup> The CIT sustained Commerce's redetermination with respect to including imports with zero quantities in its surrogate value calculations, but remanded to Commerce for a second time its choice of surrogates to value tempered glass and scrapped solar cells and modules.<sup>5</sup>

In its second remand redetermination, issued in July 2018, Commerce reexamined its selection of the surrogate values at issue and, under respectful protest, valued tempered glass using Bulgarian import data rather than Thai import data and valued scrapped solar cells and modules using a different Thai tariff system classification number.<sup>6</sup> The CIT sustained Commerce's second redetermination.<sup>7</sup> Commerce published a notice of a court decision that was not in harmony with the final results of its review on February 1, 2019.<sup>8</sup>

Trina and SolarWorld appealed various aspects of the CIT's final decision to the U.S. Court of Appeals for the Federal Circuit (CAFC). On June 24, 2020, the CAFC affirmed the CIT's judgment: (1) sustaining Commerce's inclusion of imports with zero quantities in surrogate value calculations; (2) Commerce's valuation of backsheets; and (3) remanding to Commerce to further justify, or reconsider, the surrogate that it selected to value tempered glass.

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<sup>3</sup> See *SolarWorld Americas, Inc. et al. v. United States*, 273 F. Supp. 3d 1254 (CIT 2017).

<sup>4</sup> See Final Results of Remand Redetermination, *SolarWorld Americas, Inc. v. United States*, Court No. 16-00134, Slip Op. 17-143 (Court of International Trade October 18, 2017), dated January 18, 2018.

<sup>5</sup> See *SolarWorld Americas, Inc. et al. v. United States*, 320 F. Supp. 3d 1341 (CIT 2018).

<sup>6</sup> See *SolarWorld Americas, Inc. v. United States*, Court No. 16-00134, Slip Op. 18-53 (Court of International Trade June 18, 2018) Results of Second Remand Redetermination Pursuant to Court Order, dated July 31, 2018.

<sup>7</sup> See *SolarWorld Americas, Inc. et al. v. United States*, 355 F. Supp. 3d 1306 (CIT 2018).

<sup>8</sup> See *Crystalline Silicon Photovoltaic Cells, Whether or not Assembled Into Modules, from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Antidumping Duty Administrative Review*, 84 FR 1053 (February 1, 2019) (*Timken Notice and Amended Final Results*).

However, the CAFC vacated the CIT's judgment sustaining Commerce's selection of a surrogate to value nitrogen and remanded the case for further proceedings consistent with its opinion.<sup>9</sup>

In its third remand redetermination, issued in January 2021, Commerce continued to value nitrogen using Thai import data. Specifically, in its third remand redetermination Commerce explained why it did not find the average unit value (AUV) of Thai imports of nitrogen during the period of review (POR) to be aberrational, clarified its practice for evaluating whether an AUV from a surrogate country is aberrational, and addressed the discrepancies between U.S. POR exports of nitrogen to Thailand and Thai POR imports of nitrogen from the United States.<sup>10</sup> The CIT remanded the case to Commerce for a fourth time, ordering Commerce to reconsider, or further explain, its use of Thai import data to value nitrogen.<sup>11</sup>

In its final remand redetermination, issued in September 2021, under respectful protest, Commerce used Bulgarian import data, rather than Thai import data, to value nitrogen.<sup>12</sup> The CIT sustained Commerce's final redetermination.<sup>13</sup>

#### Timken Notice

In its decision in *Timken*,<sup>14</sup> as clarified by *Diamond Sawblades*,<sup>15</sup> the CAFC held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not "in harmony" with Commerce's determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's December 8, 2021 judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

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<sup>9</sup> See *SolarWorld Americas, Inc. et al. v. United States*, 962 F.3d 1351 (Fed. Cir. 2020).

<sup>10</sup> See *SolarWorld Americas, Inc. et al. v. United States*, Consol. Court No. 16-00134 (CIT September 2, 2020), Final Results of Redetermination Pursuant to Court Remand, dated January 14, 2021.

<sup>11</sup> See *SolarWorld Americas, Inc. et al. v. United States*, 532 F. Supp. 3d 1266 (CIT 2021).

<sup>12</sup> See *SolarWorld Americas, Inc., et al. v. United States*, Consol. Court No. 16-00134 (CIT July 28, 2021), Final Results of Redetermination Pursuant to Court Remand, dated September 27, 2021.

<sup>13</sup> See *SolarWorld Americas, Inc. et al. v. United States*, Consol. Court No. 16-00134, Slip Op. 21-165 (CIT December 8, 2021).

<sup>14</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>15</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

## Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* and *Timken Notice and Amended Final Results* with respect to Trina, Canadian Solar International Limited; Canadian Solar Manufacturing (Changshu) Inc.; Canadian Solar Manufacturing (Luoyang) Inc.; BYD (Shangluo) Industrial Co., Ltd.; and Shanghai BYD Co., Ltd. as follows:

<b>Exporters</b>	<b>Weighted-average dumping margin (percent)</b>
Changzhou Trina Solar Energy Co., Ltd.; Trina Solar (Changzhou) Science and Technology Co., Ltd.; Yancheng Trina Solar Energy Technology Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; Hubei Trina Solar Energy Co., Ltd.	0.00
Canadian Solar International Limited	0.00
Canadian Solar Manufacturing (Changshu) Inc.	0.00
Canadian Solar Manufacturing (Luoyang) Inc.	0.00
BYD (Shangluo) Industrial Co., Ltd.	0.00
Shanghai BYD Co., Ltd.	0.00

## Cash Deposit Requirements

Because Trina, Canadian Solar International Limited; Canadian Solar Manufacturing (Changshu) Inc.; Canadian Solar Manufacturing (Luoyang) Inc.; and Shanghai BYD Co., Ltd. all have a superseding cash deposit rate, *i.e.*, final results covering these companies have been published in a subsequent administrative review of the AD order on solar cells from China, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP) in connection with these companies. Thus, this notice will not affect the current cash deposit rate of these companies. However, we will issue revised cash deposit instructions to CBP for BYD (Shangluo) Industrial Co., Ltd.

## Liquidation of Suspended Entries

At this time, Commerce remains enjoined, by orders of the CIT, from liquidating entries of subject merchandise that was entered, or withdrawn from warehouse, for consumption during the period December 1, 2013 through November 30, 2014 and exported by any of the following

companies: (1) Trina; (2) Canadian Solar International Limited; (3) Canadian Solar Manufacturing (Changshu) Inc.; (4) Canadian Solar Manufacturing (Luoyang) Inc.; (5) BYD (Shangluo) Industrial Co., Ltd.; (6) Shanghai BYD Co., Ltd.; (7) Wuxi Suntech Power Co., Ltd/Luoyang Suntech Power Co., Ltd.; (8) Dongguan Sunworth Solar Energy Co., Ltd.; (9) ERA Solar Co., Ltd.; (10) ET Solar Energy Limited; (11) JA Solar Technology Yangzhou Co., Ltd.; (12) Jiangsu High Hope Int'l Group; (13) JingAo Solar Co., Ltd.; (14) Ningbo Qixin Solar Electrical Appliance Co., Ltd.; (15) Shenzhen Glory Industries Co., Ltd.; and (16) Shenzhen Topray Solar Co., Ltd. These entries will remain enjoined pursuant to the terms of the injunctions during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on any unliquidated entries described in the preceding paragraph, in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when either the respondent's weighted-average dumping margin is not zero or *de minimis* or the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is *de minimis* (*i.e.*, less than 0.5 percent), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.<sup>16</sup>

#### Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: December 20, 2021.

Ryan Majerus,  
Deputy Assistant Secretary  
for Policy and Negotiations,  
Performing the Non-Exclusive Functions and Duties of the  
Assistant Secretary for Enforcement and Compliance.

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<sup>16</sup> See 19 CFR 351.106(c)(2).

